

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.594 of 2017
(Roshan s/o. Jitendra Baraliya .vs. State and another)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.S.S.Ghate, Advocate for the applicant.
Ms M.H.Deshmukh, A.P.P. for respondent no.1/State.
Mr.S.G.Joshi, Advocate for respondent no.2.

CORAM : P. N. DESHMUKH &
 M. G. GIRATKAR, JJ.

DATE : 8.6.2018.

Heard Mr.S.S.Ghate, learned Counsel for the applicant, Ms M.H.Deshmukh, learned A.P.P. for respondent no.1/State and Mr.S.G.Joshi, learned Counsel for respondent no.2.

This application is filed for quashing of First Information Report No.339 of 2017, dt.12.7.2017 registered by P.S.O., Nandura, District Buldhana for the offence punishable under Section 420 of the Indian Penal Code.

Learned Counsel for the applicant submits that the applicant is a businessman and for the purpose of running his factory unit situated in M.I.D.C., had sought loan from the State Bank of India, Branch at Nandura to the extent of Rs.20 Lacs. The learned Counsel further submitted that, on 3.10.2016, fire broke in the unit damaging the machineries and for that purpose, the applicant claimed insurance amount as the unit was insured with the Insurance Company and accordingly, the applicant

received insurance amount of Rs.52 Lacs, though, according to the applicant, the loss occurred was to the extent of Rs. One Crore. It is further case of the applicant that the amount received from the Insurance Company was utilized by him for payment of wages, for construction of unit and for purchase of accessories, machineries etc. However, respondent no.2 lodged report contending that, since the amount was advanced, as loan, to the applicant, it was obligatory on the part of the applicant to deposit the amount received from the Insurance Company in the loan account, but the applicant, instead of same, spent said amount on refurnishing unit etc.. Perusal of the report reveals that the offence is registered only on this ground.

Learned Counsel for respondent no.2 submits that, by now, said respondent has retired and seeks time to obtain further instructions with regard to loan account of the applicant. However, the document filed in support of the application, particularly the Certificate issued by respondent no.2's bank, dt.29.8.2017 clearly establishes that the applicant has satisfied the entire loan amount of Rs.20 Lacs on 10.7.2017 and accordingly, his loan account is closed. In fact, from the Certificate, it is further noted that applicant is further provided financial assistance by same bank to the extent of Rs.60 Lacs and the account is stated to be regularly maintained as per norms of IRAC. The account is, therefore, stated to be standard.

In view of the facts above stated, the only reason of registration of offence against the applicant is applicant's failure to deposit the amount received from the Insurance Company in the loan account. However, this cannot be

accepted by any reason in view of the fact that the unit was insured with the particular Insurance Company and having sustained damages due to fire, the applicant claimed insurance claim and received certain amount as aforesaid, which amount, by no stretch of imagination, can be required to be claimed by respondent no.2 to be deposited by the applicant in the loan account.

Moreover, from the documents in support of the application, it is already found that, even after the incident of fire and causing of damage to the unit, the applicant has cleared the loan and is granted further assistance by some bank.

In view of above facts, we find no reason to grant time to respondent no.2 to seek further instructions. In the circumstances, the application is liable to be allowed. Hence, the following order.

// ORDER //

F.I.R. No.339 of 2017, dt.12.7.2017 registered by Police Station, Nandura, District Buldhana against the applicant for the offence punishable under Section 420 of the Indian Penal Code is quashed. The application is allowed in the above terms.

In view of above, Criminal Application No.1683 of 2017 stands disposed of.

JUDGE

JUDGE

**jaiswal*